

Iowa Department of Natural Resources
Natural Resource Commission

ITEM

11

DECISION

TOPIC Emergency Filing After Notice – Chapter 8 – Contracts for Public
Improvements and Professional Services

The Commission is requested to approve the Emergency Filing After Notice to amend chapter 8, Contracts for Public Improvements and Professional Services. Chapter 8 provides the regulations for entering into contracts for public improvements and professional services.

The proposed new chapter will adopt by reference changes to 561 IAC chapter 8. The amendments change the threshold amount for which the Department of Natural Resources must seek approval from the Natural Resources Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds are in line with changes to Iowa Code chapter 26.

The Notice of Intended Action was published on January 28, 2009. The Department received no comments. Filing the rules emergency is consistent with the requirements of Iowa Code chapter 17A because the rule does not restrict the public. Adopting the rule in this fashion will allow it to become effective in time for the spring construction season while still affording the public an opportunity to provide review and comment of the proposed change.

The Department is in the midst of revising and updating the entire chapter related to contracting rules to ensure compliance with applicable state law and to improve the clarity of the rules, and will be seeking approval from the Commission in the future for more extensive changes. The Department, however, is moving forward with these proposed smaller changes to the public improvement portions of the rule at this time to accommodate the upcoming construction season.

Ed Tormey
Legal Services Bureau
March 12, 2009

Attachments:

- Emergency Filed After Notice: 571 IAC Chapter 8, Contracts for Public Improvements and Professional Services
- Emergency Filed After Notice: 561 IAC Chapter 8, Contracts for Public Improvements and Professional Services

Adopted Emergency After Notice

Pursuant to the authority of Iowa Code subsection 455A.4, the Director hereby amends Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

The proposed amendment will change the threshold amount for which the Department of Natural Resources may approve public improvement projects and make other small modifications to align the bidding requirements with Iowa Code Chapter 26. The thresholds proposed are in line with changes to Iowa Code Chapter 26.

The Notice of Intended Action was published on January 28, 2009, as ARC 7543B. The Department received no comments and have made no changes from the Notice of Intended Action.

The Department proposed to adopt these rules upon filing to be effective March 20, 2009. The adoption is compliant with the requirements of Iowa Code section 17A.5(2)"b," as the rule impacts the business operation of the Department and would provide a benefit to the vendor community through virtue of an expedited process. Allowing this earlier effective date will enable spring construction activities to utilize the expedited process.

These amendments are intended to implement Iowa Code section 455A.4.

The following amendments are adopted.

ITEM 1. Amend Rule 561 – 8.2(17A,26,455B,456A,461A,473) as follows;
561—8.2 (17A,26,455B,456A,461A,473) Contracts for public improvements.

8.2(1) Definition. As used in these rules, "public improvement" means ~~any building or construction work, including road or bridge construction, reconstruction and maintenance, to be paid for in whole or in part by the use of state funds~~ public improvement as defined by Iowa Code section 26.2. Iowa Code section ~~23-24~~ 73.3, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) Invitation for bids. When the total cost of a public improvement project exceeds the sum of ~~\$25,000~~ 100,000 as estimated by the department ~~or the construction services bureau of the administrative services division~~, the department shall ~~advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said notices shall be not less than 15 days prior to the date set for receiving bids.~~ Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. Plans, specifications and the contract form shall be provided to all prospective bidders as provided in the invitation for bids utilize the competitive bid process identified in Iowa Code chapter 26.

8.2(3) Invitation for bids. The invitation for bids must state the following items:
a. ~~The time and place for filing sealed proposals.~~
b. ~~The time and place sealed proposals will be opened and considered on behalf of the department.~~
c. ~~The general nature of the public improvement on which bids are requested.~~
d. ~~The general terms when the work must be commenced and when it must be completed.~~
e. ~~Any further information or requirements which the department deems pertinent or advisable.~~

~~All sealed bids shall be publicly opened as specified in the notice to bidders. The bids shall be tabulated and made available in a written form to any interested party.~~

~~8.2(4) (3) Solicitation of quotations. Competitive quotations may be solicited on public improvement projects estimated by the department to cost less than \$25,000. At least three quotations shall be solicited unless there are an insufficient number of local, qualified contractors interested in the project. If the estimated total cost of a public improvement is one-hundred thousand dollars or less, the department must utilize the competitive quotation process identified by Iowa Code section 26.14, as may be amended, unless otherwise provided by this rule. The department must utilize this competitive quotation process for public improvement contracts below the amount designated by Iowa Code section 26.14(2). The department may opt to use the competitive bid process described in subrule 8.2(2) instead of the competitive quotation process.~~

~~8.2(5) Failure to receive a qualified bid or quotation. In the event that no qualified sealed bids or quotations are received, the department may negotiate a contract with a qualified contractor.~~

~~8.2(6) Exceptions to the requirement for bids or quotations. The director may authorize the negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids under the following circumstances: only as the law allows.~~

~~a. If the contemplated project involves the provision of utility services or the construction of a utility system and it would not be practicable to allow someone other than the utility company to perform the work.~~

~~b. Where competition is precluded because of patent rights, secret processes, or control of basic raw materials.~~

~~c. Where the project involves work of such a specialized nature that only one firm or person can reasonably be expected to accomplish it.~~

~~d. Where the service or product is provided by a nonprofit private corporation, a governmental body or an educational institution.~~

~~e. When emergency repair of a public improvement is necessary and delay for advertising or solicitation of quotations might cause serious loss or injury to the state.~~

ITEM 2. Amend subrule 8.4(1) as follows:

8.4(1) Contract approval. All contracts for ~~public improvement or~~ professional services in excess of \$25,000 shall be approved by the director and the appropriate commission if required by statute. All contracts for public improvements in excess of \$100,000 shall be approved by the director and the appropriate commission. ~~Professional services Contracts~~ contracts less than \$25,000 shall be approved by the director and the appropriate commission only if required by statute or rule of the commission.

Date

Richard A. Leopold, Director

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NATURAL RESOURCES COMMISSION[571]

Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 8, "Contracts for Public Improvements and Professional Services," and adopts a **new** Chapter 8 with the same title, Iowa Administrative Code.

The proposed new chapter will adopt by reference changes to IAC 561--Chapter 8. The amendments change the threshold amount for which the Department of Natural Resources must seek approval from the Natural Resources Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code Chapter 26. The thresholds are in line with changes to Iowa Code Chapter 26.

The Notice of Intended Action was published on January 28, 2009, as ARC 7535B. The Department received no comments and have made no changes from the Notice of Intended Action.

The Department proposed to adopt these rules upon filing to be effective March 20, 2009. The adoption is compliant with the requirements of Iowa Code section 17A.5(2)“b,” as the rule impacts the business operation of the Department and would provide a benefit to the vendor community through virtue of an expedited process. Allowing this earlier effective date will enable spring construction activities to utilize the expedited process.

These amendments are intended to implement Iowa Code section 455A.4.

The following amendment is adopted.

Rescind 571—Chapter 8 and adopt the following **new** Chapter 8 in lieu thereof:

CHAPTER 8

CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

571—8.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 8, Iowa Administrative Code, as amended through March 25, 2009.

Date

Richard A. Leopold, Director

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